

DEPARTMENT OF TRANSPORTATION

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Comment Letter # 5



*Flex your power!
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August 22, 2005

SCL-101-R17.82
SCL101787
SCH2004112060

Ms. Rebecca Tolentino
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

Dear Ms. Tolentino:

**Cochrane Road Planned Unit Development – Draft Environmental Impact Report
(DEIR)**

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the DEIR and have the following comments to offer.

Forecasting

- 5-1 | 1. Table 3.12-3, page 3.12-15: The trip generation rate for Saturday Peak Hour Movie Theater is too low when compared with the ITE, 7th Edition, #443.
- 5-2 | 2. Percentage reduction for Shopping Center ranges from 20% to 49%. The ranges should be from 20% for Daily and 25% for the rest as stated on page 3.12-14.
- 5-3 | 3. Percentage reduction for Theater ranges from 17% to 35%. This differs from what is stated on page 3.12-14.

Highway Operations

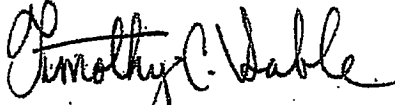
- 5-4 | 1. Under mitigation measures, the DEIR identifies the impact to US-101 as significant and unavoidable. Therefore, the developers should pay their fair share fee contribution towards any future improvements to the impacted US-101 freeway system.
- 5-5 | 2. Explain why the DEIR does not list the impacts and mitigation measures that have been evaluated in the traffic report for the intersections of Cochrane Road/northbound US-101 ramp.
- 5-6 | 3. Provide a queue analysis for intersection #6 (US-101(N)/ Cochrane Road) mitigated scenario.

Comment Letter # 5 continued

Ms. Rebecca Tolentino
August 22, 2005
Page 2

Should you require further information or have any questions regarding this letter, please call José L. Olveda of my staff at (510) 286-5535.

Sincerely,

A handwritten signature in black ink, reading "Timothy C. Sable". The signature is written in a cursive style with a large initial "T" and "S".

TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Scott Morgan (State Clearinghouse)

Response to Letter 5 – California Department of Transportation – August 22, 2005

Response to Comment 5-1

Comment noted. As stated on page 3.12-14 of the Draft EIR, the rate for the proposed movie theatre was the Institute of Traffic Engineers (ITE) rate for multi-plex movie theatres, number #445. The rate noted by the commenter was for a movie theatre without a matinee, number #443.

Response to Comment 5-2

Comment noted. The percentage reductions for the proposed project fall within the ranges noted by the commenter.

Response to Comment 5-3

Comment noted regarding the range in the percentage reduction for trips associated with movie theatres. The traffic impact analysis for the proposed project used a 20 percent reduction for the peak hour trip generation and a lower internalization reduction of 10 percent for daily trips to reflect the lower volume of traffic on roadways during non-peak hours, which falls within the range noted by the commenter.

Response to Comment 5-4

Comment noted. The project applicant would be required to pay their fair share of traffic impact fees to the City of Morgan Hill. Regardless of the payment of development impact fees for roadway improvements, the impact to U.S. Highway 101 would be considered significant and unavoidable. The City Council would be required to adopt a document called a 'statement of overriding consideration' for each significant and unavoidable impact identified in the Draft EIR, if they find that the benefits of the proposed project overcome the environmental burdens created by the significant environmental impacts. If the City can't make this finding, then the proposed project would not be approved.

Response to Comment 5-5

The traffic impact analysis evaluated the Cochrane Road/Northbound U.S. Highway 101 ramp. The level of service (LOS) for this intersection would operate at LOS B during the AM peak hour, LOS C during the PM peak hour, and LOS E during the Saturday peak hour under background plus project conditions. Intersection operations at signalized freeway ramp intersections, as discussed in the standards of significance in the Draft EIR on page 3.12-10 are considered unacceptable when they deteriorate from an acceptable level of service (LOS E or better) to an unacceptable level (LOS F). Therefore, the proposed project

2.0 RESPONSE TO COMMENTS

is not operating at an unacceptable level of service and no impact was identified. No mitigation measures are necessary.

Response to Comment 5-6

Queuing along Cochrane Road is discussed in Response to Comment #2-35.

Comment Letter # 6

Robert J. Benich
2435 Fountain Oaks Drive
Morgan Hill, CA 95037

August 24, 2005

Ms. Rebecca Tolentino
Associate Planner
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Subject: Comments Regarding Draft EIR for Cochrane Road PUD

Dear Ms. Tolentino:

This letter contains my comments regarding the subject draft EIR. Overall, this EIR lacks three important features for a large project PUD:

- 6-1 • Lack of a Water Conservation plan
- 6-2 • Lack of an Energy Management plan
- 6-3 • Lack of a Public Art plan

As we diminish scarce resources, it is increasingly important for large-scale projects to be aware of and to address how they will reduce their impact on the environment. It is necessary for large projects to use currently available technology for mitigating their use of energy for lighting, heating, cooling, airflow, and supplying hot water.

- 6-4 An Energy Management Plan needs to be developed to show a comparison in energy needs between similar projects and this Cochrane Road PUD. The plan should have a goal for reducing its energy requirements through innovative energy saving methods and discussing each in detail.

It is also necessary for these types of projects to reduce their needs for precious water supplies. A large scale project such as this one should have a plan for:

- 6-5 1) Recycling wastewater from dishwashers, showers and other "grey water" sources to be used for landscape requirements.
- 6-6 2) Using one or more of the four wells currently on the property for landscape needs.
- 6-5 3) Planning to use low flow toilets, urinals, showers and other water saving devises in all stores and restaurants.

Comment Letter # 6 continued

August 24, 2005
Page 2

There is an existing operating irrigation well on the Millerd-Low property and this should be part of a water conservation plan for this project.

Finally, this project needs to specifically address how public art will be integrated into the overall project. The Morgan Hill General Plan encourages the use of public art and this large scale PUD should have a specific plan for what and how it intends to provide that enhancement for the public good.

The present draft EIR needs to have the above three plans added in order for this document to be comprehensive and complete. More detailed comments follow.

3.1 Aesthetics

6-7

3.2.2. Regulatory Setting

Community Development

Policy 12h in the Morgan Hill General Plan encourages installation of public art in new non-residential projects. This large scale PUD should specifically address how it will enhance the beauty and add to the delight and enjoyment of patrons to this massive shopping complex. A visit to many new shopping complexes throughout the state of California readily shows how developers have added public art for the benefit of residents and visitors. This is a Potentially Significant Impact and must be addressed by a mitigating Public Art Plan.

3.9 Land Use

Impact 3.9-3b Assisting locally owned small businesses

Specifically, how will the City of Morgan Hill "... fund programs aimed at assisting locally owned small retailers"? There are no specific programs listed in the EIR; yet, this will have a potentially significant impact on local business owners.

6-8

Mitigation Measures MM 3.9-4, -5 & -6 I disagree with the conclusion that the listed mitigation measures will reduce the potential for shopping center "urban decay" to less than significant. Maintaining cleanliness, providing seminars for local retailers, and applying for RDA programs will not prevent a decline in business for local retailers. I maintain that this is still a Potentially Significant impact; it may be unavoidable, but it is still potentially significant.

3.11 Transportation & Circulation

6-9

Impacts 3.12-2 & 3.12-12 Traffic Impacts

These two items look identical. Suggest they be merged.

Comment Letter # 6 continued

3.13 Utilities

Impact 3.13-1 Waste Products

6-10

It is unacceptable to have such a broad estimate for waste products. The report lists a range or 0.8 to 8.3 tons/day – a factor of ten difference. Based on the types of stores in this proposed center the engineering estimate should be closer to a factor of two difference. There should be more accurate numbers available from other similar projects.

Impact 3.13-3 Demand for Potable Water

6-11

For this large scale project there needs to be well calculated numbers for the estimated daily demand for water, including:

- 1) landscaping needs
- 2) drinking & cooking water
- 3) washing, cleaning & sanitary needs

6-12

The water use estimate should take into account the options for a supermarket (with & without) and multi-screen theatre complex (with & without). There should be a comparison to similar projects and a plan for reducing the amount of water estimated to be needed. For example, there is an existing operating irrigation well on the Millerd-Low property and this should be part of a water conservation plan for this project. This well could be used for irrigation for this project.

Sincerely,



Robert J. Benich, P.E.

2.0 RESPONSE TO COMMENTS

Response to Letter 6 – Robert Benich – August 24, 2005

Response to Comment 6-1

As discussed in Section 3.11, Utilities, the proposed project would increase the demand for potable water. However, the existing water system can accommodate the proposed project and the proposed project would not deplete groundwater supplies and/or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the groundwater table as is required to be analyzed under the California Environmental Quality Act. Water conservation measures may be incorporated as conditions of project approval, but would not reduce a potentially significant impact due to water consumption at the project site under the California Environmental Quality Act.

Response to Comment 6-2

Energy demands associated with the proposed project are addressed in Section 6.1, Irreversible Environmental Changes. The proposed project would result in an increased intensity of development with the conversion of the project site to a commercial center. A variety of nonrenewable and limited resources would be irretrievably committed for project construction and maintenance, including energy. These energy resource demands relate to initial project construction, transport of people and goods, and lighting, heating and cooling of buildings. In response to Letter #15 received by the Bay Area Air Quality Management District, a mitigation measure has been incorporated into the EIR that requires the project applicant to incorporate a number of design features into the project design to reduce area source emissions and energy demands associated with the proposed project. These measures include: carefully selecting and locating trees to provide shade for structures and pathways within the project site during the summer months; incorporation of as many energy conservation features as possible into the project design and construction of new buildings at the project site (e.g. increased wall and ceiling insulation beyond code requirements, super insulated windows, and maximum energy efficient lighting); installation of super efficient heating, ventilation, and air conditioning systems; and incorporation of light colored and reflective roofing materials into the project design. With implementation of this mitigation measure, the proposed project would not involve the wasteful use of energy.

Response to Comment 6-3

The commenter notes that Policy 12h in the *City of Morgan Hill General Plan* encourages installation of public art in new non-residential projects. Appendix G, in the California Environmental Quality Act requires that under 'aesthetics/visual resources' an EIR address whether or not a project will have a substantial adverse effect on scenic resources or a scenic vista, scenic resources within a State Scenic Highway or substantially degrade the visual character of the project site and its surroundings. Incorporation of public art as

2.0 RESPONSE TO COMMENTS

required by Policy 12h in the *City of Morgan Hill General Plan* would enhance the project site. City staff indicates that the project applicant is open to the concept of providing public art and would be willing to consider requests/proposals for the installation of public art at the proposed project. However, this is not considered a significant impact under visual resources per the California Environmental Quality Act.

Response to Comment 6-4

See Response to Comment #6-2.

Response to Comment 6-5

See Response to Comment #6-1.

Response to Comment 6-6

See Response to Comment #1-10.

Response to Comment 6-7

See Response to Comment #6-3.

Response to Comment 6-8

The commenter requests more information on specific programs the City of Morgan Hill will fund that will assist locally owned small retailers as indicated in Mitigation Measure 3.9-5. Impact 3.9-3b seems to be with respect to major tenants, not small locally owned retailers. However, Mitigation Measure MM 3.9-5 includes some examples of programs for small businesses are listed. As noted in this mitigation measure, programs that would assist locally owned small retailers include: business seminars sponsored by Target and the project developers to educate local retailers, or other programs geared towards small business assistance, such as a kiosk at the proposed project providing information on shopping opportunities in Downtown Morgan Hill or other centers. These programs could be financed using a percentage of the sales tax revenue generated by the proposed project. Also see Response to Comment #13.

The less than significant impact is with respect to Lawrence Oaks and Tennant Station. Cochrane Plaza, the other center relevant to this section, may result in a secondary significant and unavoidable impact from urban decay. These impacts are related to actual physical decay resulting from a decline in business, not a decline in business itself, which alone is not considered a potentially significant impact under the California Environmental Quality Act.

2.0 RESPONSE TO COMMENTS

Response to Comment 6-9

Comment noted. Impact 3.12-2 addresses project related impacts to the segment of U.S. Highway 101 between Tennant Avenue and Dunne Avenue and Impact 3.12-12 addresses *cumulative* impacts to this segment as required by the California Environmental Quality Act.

Response to Comment 6-10

Comment noted. The commenter believes that waste generation rates obtained for similar commercial projects are considered too wide. As discussed on page 3.13-6 of the Draft EIR, neither the City of Morgan Hill nor the South Valley Waste and Disposal have adopted waste generation rates for purposes of evaluating impacts to city services. Although the waste generation rates anticipated for the proposed project vary, the waste management provider has sufficient capacity to accommodate the waste disposal needs of the proposed project within the Pacheco Pass Landfill currently serving the City of Morgan Hill.

Response to Comment 6-11

Comment noted. The estimated water demand is based on the *City of Morgan Hill Water Master Plan* for commercial uses at the project site. The *City of Morgan Hill Water Master Plan* estimates the total water demand for commercial uses based on a variety of uses and for landscaping associated with these uses. As the range of specific 'commercial' uses proposed at the project site is not known at this time, it is difficult to predict the specific water use requirements for each retail establishment.

Response to Comment 6-12

According to Section 15126.6, Consideration and Discussion of Alternatives to the Proposed Project, the range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. Alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that could feasibly attain most of the basic objectives of the project. Elimination of the theatre was not an alternative evaluated in the Draft EIR as it did not meet the objectives of the proposed project and therefore was not addressed in the Draft EIR. Water use associated with the alternatives, including the 'Supermarket' Alternative are evaluated in Section 4.0, Alternatives to the Project, however water use associated with this alternative would not vary substantially from the proposed project.

Please see Response to Comment #1-10 as to the reasons why City staff does not support using the on-site well for municipal use.

Comment Letter # 7

DangKhoa T. Vo
18610 Serra Avenida
Morgan Hill, CA 95037
August 26, 2005

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037-4128
Attn: Rebecca Tolentino, Associate Planner

RE: COMMENTS REGARDING THE COCHRANE ROAD PLANNED UNIT DEVELOPMENT

Dear Miss Tolentino,

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) prepared for the aforementioned development. As homeowners in the Mission Ranch Development, my wife and I are in support of the Development and very please to have had the opportunities to meet and to discuss the project with the developers. We believe the developers are upfront with the residents on the issues and want to do what is best for all parties. With that said, we have some comments after reviewing the DEIR and want to make sure they are addressed as part of the EIR process prior to the City granting project approval to the developer.

Comments:

- I.
7-1 Section S-2 Project Alternatives Considered, page S-2.
In the middle of this paragraph, "From the remaining options, Alternative 2, the "Reduced Density Alternative," would be the environmentally superior alternative and would result in a lesser degree of environmental impact as compared to the proposed project.

This is inconsistent with the Alternatives listed in Section 1:0 on page 1.9, where Alternative 2 is listed as the Supermarket Alternative. What is the correct alternative identified in Section S-2?
- II.
7-2 Executive Summary table, Noise Impact 3.10-2 -- It lists an additional 22,009 daily weekday automobile trips on the existing roadway network, it lists this as a "Significant Project Impact" but there are no mitigation measures identified for this impact. It states that it is a short-term significant and unavoidable project impact. This is highly unusual in that a new development that can generate a new 22,000 daily trips per weekday is identified as a "short-term significant unavoidable project impact". How is the term "short-term" defined? If the noise level is generated/increased due to this project and on a daily and continual basis, it cannot be short-term. This is a project induced/created noise level and it must be addressed and mitigated. Saying that the increase noise level is short-term and unavoidable is unacceptable.
- III.
7-3 The majority of noise generated will come on the weekend. Was there an analysis on the additional trips generated on a Saturday or Sunday? And if so, were there any mitigation measures proposed? There have to be some mitigation measures to address this noise issue on the weekend.
- IV.
7-4 Executive Summary table, Noise Impact 3.10-5 -- the proposed project would contribute to cumulative traffic noise at sensitive receptors along Cochrane Road -- it is a "Significant Cumulative Impact" but no mitigation measures were identified. It states that it is a

Comment Letter # 7 continued

- 7-4** | "Significant Unavoidable Cumulative Impact". This cumulative impact would not be significant if it wasn't for the added traffic generated by the project. It must be addressed and mitigated. Saying that it is unavoidable is unacceptable.
- 7-5** | V. The proposed lane configurations described in various locations in the DEIR don't match up with what is shown in Figure 2-8 and Figure 2-10 at both new proposed intersections. It described 1 through lane in the EB direction at Cochrane and De Paul but the figures show 3 through lanes. It also described 1 shared left-turn/through lane and 1 right-turn lane at Mission View and Cochrane but the figures show 3 through lanes, a left-only, and a right-only. This makes it difficult to comment on the lane configurations of the proposed intersections.
- 7-6** | VI. Section 2.0 – Site Access and On-Site Circulation. Mission View/Cochrane Rd intersection: On the proposed southbound Mission View Drive – instead of a shared through/right-turn lane and a left-only; change to left-only, 1 through, and a right-turn only lane, this right-turn only lane would allow drivers to get onto Cochrane Rd faster and avoid a stacking of cars at this intersection, avoiding exhaust fumes and noise from getting to the residents immediately across from the intersection.
- 7-7** | VII. Section 2.0 – Site Access and On-Site Circulation. Mission View/Cochrane Rd intersection: On the proposed eastbound Cochrane Rd – instead of a shared through/left-turn lane and a right-only; change to left-only (with a long stacking lane), and a wide through/right-turn lane. This will allow delivery trucks to wait at the left turn-only lane and not delaying residential traffic from coming into the subdivisions.
- 7-8** | VIII. Traffic will increase on Mission View Drive between Cochrane Rd and E. Dunne Ave due to this development but there are no mitigation measures along Cochrane Rd to address the increase in traffic and potential for accidents. There are two entry points to the Mission Ranch Development along Mission View Drive and when traffic is increased, the potential for accidents will increase with it. There have to be some kind of mitigation measures in place to mitigate this significant impact.
- 7-9** | IX. Would like to see a different type of usage for the pad at the corner of Mission View and Cochrane instead of a restaurant because the smell from the kitchen will be over the residential area all the time and it is not something we want to smell all the time (no matter how good it may be), not 7 days a week and 365 days of the year.

We would like to have a response to our comments as part of the EIR process.

Sincerely,
Dangkhua T. Vo
(by e-mail)

Comment Letter # 7 continued

DangKhoa T. Vo
18610 Serra Avenida
Morgan Hill, CA 95037
August 26, 2005

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037-4128
Attn: Rebecca Tolentino, Associate Planner

RE: COMMENTS REGARDING THE COCHRANE ROAD PLANNED UNIT DEVELOPMENT - 2nd LETTER

Dear Miss Tolentino,

Please include this letter as a follow-up to my first letter, my first letter may not have been very clear on these points:

Comments:

7-10 | My various comments regarding lane configurations at the two new signalized intersections should be minimum, there should be more additional through lanes in all directions at both intersections, similar to what is shown on Figure 2-8 and Figure 2-10.

All the infrastructure improvements and street/lighting/sidewalk improvements should be done as part of Phase I.

7-11 | III. The majority of noise generated will come on the weekend. Was there an analysis on the additional trips generated on a Saturday or Sunday? And if so, were there any mitigation measures proposed? There have to be some mitigation measures to address this noise issue on the weekend.
I believe the DEIR mentioned that the Institute of Transportation Engineers (ITE) does not require an analysis for the weekends and none was made. If this is the case, I disagree with this assumption. This will be a shopping center next to residential developments, traffic will be heavy mostly on the weekend (and holidays) and this impact should be determined. They only have to look at Gilroy to see how much traffic it has generated at the various interchanges due to the developments. If this was an analysis for an expressway, a street, etc. I'd agree with their assessment for weekdays traffic impact but the usage proposed is completely different and a traffic analysis and traffic forecasts should be done for the weekends also. Mitigation measures then should be based on the traffic impacts on weekends and weekdays traffic forecasts.

We would like to have a response to our comments as part of the EIR process.

Sincerely,
Dangkhoa T. Vo
(by e-mail)

2.0 RESPONSE TO COMMENTS

Response to Letter 7 – DangKhoa T. Vo – August 26, 2005

Response to Comment 7-1

Comment noted. The 'Reduced Density Alternative' was incorrectly noted as 'Alternative #2' in Section 4.5, Environmentally Superior Alternative on page 4-22 of the Draft EIR. The third paragraph on page 4-22 of the Draft EIR has been revised to reflect the correct alternative:

CEQA Guidelines Section 15126.6(e)(2) requires that the environmentally superior alternative be identified. If the environmentally superior alternative is the 'No Project' Alternative, the EIR shall also identify an environmentally superior alternative among other alternatives. In this case, Alternative 1, 'No Project/No Development,' represents the environmentally superior alternative because, as determined from the above analysis, most impacts would be reduced relative to the proposed project. However, the 'No Project/No Development' meets none of the project objectives and is inconsistent with the General Plan and zoning land use designations. From the remaining options, Alternative 2 3, the 'Reduced Density Alternative,' would be the environmentally superior alternative and would result in a lesser degree of environmental impact as compared to the proposed project. This is due primarily to the reduced impacts related to traffic, parking and circulation and associated reduction in noise and air quality impacts that would result from the reduced square footage. However, this scenario would not be financially feasible to the project applicant and would not meet the applicant's project objectives or the City's objectives to provide commercial retail shopping center that serves the local and regional market, results in a net fiscal benefit to the City, reduces sales dollar leakage, and creates new jobs for the City of Morgan Hill. **Table 4-3** compares each considered alternative with the proposed project.

Response to Comment 7-2

As discussed in Impact 3.10-2, Operational Noise Impacts – Increases in Traffic Noise, on pages 3.10-13 and 3.10-14 of the Draft EIR, exterior noise levels at the two residences located south of Cochrane Road currently exceed the City of Morgan Hill's maximum "normally acceptable exterior noise levels" of 60 dBA L_{dn} for residential uses at an L_{dn} of 64 dBA. With the addition of traffic from the proposed project, exterior noise levels at these residences would increase by approximately 4 dBA to 68 dBA L_{dn}. To reduce the proposed project's contribution to the existing and projected traffic noise levels in excess of 60 dBA L_{dn} at these existing residences, a noise barrier fronting these uses (e.g. wall or a berm, or combination of the two) would attenuate the noise sufficiently to meet the City of Morgan Hill standards for residential uses. However, the noise impact analysis prepared by Illingworth and Rodkin, Inc. determined that constructing a noise barrier would not be feasible along Cochrane Road because driveways and De Paul Drive would require

2.0 RESPONSE TO COMMENTS

openings in the barrier that would not effectively block the noise. In addition, such a barrier would create a subsequent traffic safety hazard related to inadequate sight distances for vehicle ingress and egress at the openings for the driveways. Therefore, it was determined that construction of a noise attenuation barrier at this location would be considered infeasible.

This impact was considered a short-term significant and unavoidable impact based on the fact that the properties where these two structures are located is designated for commercial uses in the *City of Morgan Hill General Plan* and one of the single family homes is currently vacant. Due to the planned urbanization in the project vicinity, it is likely that these homes may be developed for commercial uses in the future. Therefore, the Draft EIR determined that this impact would be considered a short-term significant and unavoidable impact in the interim until these properties are developed for commercial uses. Future development on these properties would likely occur after build out of the proposed project.

Response to Comment 7-3

The traffic impact analysis included in Appendix K of the Draft EIR analyzed the number of trips during the AM and PM peak hour during the weekday and on the Saturday peak hour. As discussed in the traffic impact analysis, although the project's peak trip generation occurs on Saturday, the combination of project traffic and other cumulative traffic is lower on weekends than during the weekday commute hours. Therefore, noise levels from traffic on the weekends would not vary significantly over noise levels during the weekday and would result in a significant and unavoidable impact as discussed above.

Response to Comment 7-4

As discussed in Impact 3.10-5 in Section 3.10, Noise, project generated traffic and traffic associated with cumulative development would increase the L_{dn} at the two homes located south of the project site across Cochrane Road to 70 dBA under cumulative conditions with project-generated traffic. As discussed in the traffic impact analysis, although the project's peak trip generation occurs on Saturday, the combination of project traffic and other cumulative traffic is lower on weekends than during the weekday commute hours. As discussed in Response to Comment #7-2, to reduce the proposed project's contribution to the existing and projected traffic noise levels in excess of 60 dBA L_{dn} at these existing residences, a noise barrier fronting these uses (e.g. wall or a berm, or combination of the two) would attenuate the noise sufficiently to meet the City of Morgan Hill standards for residential uses. However, the noise impact analysis prepared by Illingworth and Rodkin, Inc. determined that constructing a noise barrier would not be feasible along Cochrane Road because driveways and De Paul Drive would require openings in the barrier that would not effectively block the noise. In addition, such a barrier would create a subsequent traffic safety hazard related to inadequate sight distances for vehicle ingress and

2.0 RESPONSE TO COMMENTS

egress at the openings for the driveways. Therefore, it was determined that construction of a noise attenuation barrier would be considered infeasible.

This impact was considered a short-term significant and unavoidable impact based on the fact that the properties where these two structures are located is designated for commercial uses in the *City of Morgan Hill General Plan* and one of the single family homes has been vacated. Due to the urbanization in the project vicinity, it is likely that these homes may be developed for commercial uses in the future. Therefore, the Draft EIR determined that this impact would be considered a short-term significant and unavoidable cumulative impact in the interim until these properties are developed for commercial uses. Future development on these properties would likely occur after build out of the proposed project.

Response to Comment 7-5

Comment noted. The lane configuration was not clearly designated on the site plan in Figure 2-8 of the Draft EIR, however the site plan shown in the traffic impact analysis (dated June 2005) assumed the lane geometry for the Cochrane Road/De Paul Drive intersection is assumed as follows:

- Northbound (De Paul Drive): one shared left/through lane and one right-turn lane.
- Westbound (Cochrane Road): one left-turn lane, two through lanes, and one right-turn lane.
- Southbound (project driveway): one shared left/through lane and two right-turn lanes with a separate overlap phase.
- Eastbound (Cochrane Road): two left-turn lanes, one through lane, and one shared through/right-turn lane.

The following lane configuration is assumed for the unsignalized intersection at Cochrane Road/Mission View Drive:

- Northbound and Southbound (Mission View): one left-turn lane and one shared through/right-turn lane.
- Westbound (Cochrane Road): one left-turn lane and one shared through/right-turn lane.
- Eastbound (Cochrane Road): one shared left-turn/through lane and one right-turn lane.

The site plan is attached to Section 3.0, Amendments to the Draft EIR.

Response to Comment 7-6

Based on the analysis conducted by Fehr & Peers, Inc. the signalization and lane geometry of Mission View Drive/Cochrane Road intersection, as required by Mitigation Measure 3.12-1b, would ensure that this intersection operate at acceptable levels of service at LOS C.

Response to Comment 7-7

See Response to Comment #7-6 above.

Response to Comment 7-8

Comment noted. Traffic safety and site access was evaluated for the proposed project. No safety hazards were identified along Mission View Drive south of Cochrane Road. As discussed in Section 3.12, Transportation and Circulation and in Appendix K (Volume III) of the Draft EIR, the proposed project includes two additional driveways on Mission View Drive to provide access to the project site. As part of the traffic impact analysis, Fehr & Peers, Inc. evaluated the driveways and determined that the two driveways behind the movie theatre complex on Mission View Drive should be eliminated in order to eliminate the potential for vehicle conflicts with pedestrians, as required by Mitigation Measure 3.12-3. Mitigation Measure 3.12-3 has been revised to require the project applicant to work with the City to incorporate traffic calming improvements at the driveways located along Mission View Drive to minimize pedestrian and vehicle conflicts at the project site. The traffic impact analysis also evaluated southernmost driveway on Mission View Drive (i.e. the first driveway north of the Cochrane Road intersection), which showed no left-turn restrictions. Fehr & Peers, Inc. determined that given the proximity of this project driveway to Cochrane Road that this driveway should be designated a right-turn in and out driveway (i.e. signs should be posted prohibiting left turn movements into and out of the project site at this driveway).

Response to Comment 7-9

Comment noted. The commenter notes that they disagree with the restaurant pad at the corner of Mission View Drive and Cochrane Road due to odors that may be generated by this type of use. The project applicant has not identified a specific restaurant for this pad.

The Bay Area Air Quality Management District (BAAQMD) monitors odors through its Regulation 7, which requires the BAAQMD to take certain enforcement actions after receiving ten or more complainants over a 90-day period. Once review under Regulation 7 is initiated, the BAAQMD would collect air samples and determine the dilution threshold necessary to render the odor to an undetectable level. If the measured dilution rate

2.0 RESPONSE TO COMMENTS

exceeds a 4:1 ratio at the property line or the standard for the given height of the emission source, then the operator must reduce odor emissions to below the threshold.

Response to Comment 7-10

See Response to Comment #7-3 above.

Response to Comment 7-11

As discussed in the traffic impact analysis, although the project's peak trip generation occurs on Saturday, the combination of project traffic and other cumulative traffic is lower on weekends than during the weekday commute hours. Therefore, noise levels from traffic on the weekends would not vary significantly over noise levels during the weekday and would result in a significant and unavoidable impact as discussed above.

As discussed in Section 3.12, Transportation and Circulation and in Appendix K (Volume III) of the Draft EIR, an analysis of the weekday AM and PM peak hour traffic and Saturday peak hour traffic was evaluated in the EIR. Mitigation measures were included to mitigate traffic impacts during all peak hours. With respect to the analysis of freeway level of service impacts, evaluation of peak Saturday conditions is not required under the CMP guidelines and Caltrans' data indicates that weekend peak hour volumes are approximately 25 percent lower than weekday peak hour volumes in the project vicinity. Therefore, an analysis of Saturday peak hour traffic was not conducted for the proposed project.

Comment Letter # 8

From: Rebecca Tolentino
To: Ashley Trewman
Date: 8/26/05 6:21PM
Subject: RE: Comments on Draft EIR for proposed Development at CochraneRd and 101

Hi Ashley -

I want to make sure that I address all of your concerns, so I've formatted my response by first copying an excerpt from your e-mail (**bold text**) and then following up with a reply (*italics*). If there is something you think that I've missed, please let me know. Also, if you have specific concerns regarding the environmental impact report (EIR), I would highly encourage you to submit your specific comments in writing so that it can be included in the final EIR. I also encourage you to attend the upcoming public hearings so that you can voice your concerns directly to the Planning Commission and City Council.

Can you describe what you mean by "wholesale store" or can you give an example. I was wondering if this meant a grocery store of some kind. Personally our neighbors and I are hoping for a Whole Foods or Nob Hill and certainly a Trader Joes would be wonderful.

An example of a wholesale store could be Smart & Final. It is not intended to mean a grocery store. One of the alternatives that the EIR evaluates is the possibility of replacing two of the in-line major buildings with a grocery store approximately 50,000 sf in size. We completely agree with you and your neighbors that it would be WONDERFUL to have a Whole Foods or Trader Joes in Morgan Hill!

I notice that some of the "plazas" if you will, don't seem to be doing so well on the whole. I certainly don't have numbers of study or anything so I could be very wrong but just based on my observation and things I read in the paper it seems there is some depression.

It is the City's understanding that the overall vacancy rate for the larger shopping centers in Morgan Hill (including Vineyard Town Center, Tennant Station, Cochrane Plaza and Lawrence Oaks Center) is approximately 5 percent, which is considered very low. Excluding the bowling alley in Tennant Station, only a few smaller lease spaces are vacant.

As part of the Cochrane Road PUD EIR, an economic study was completed to see what impact, if any, the proposed project would have on the existing shopping centers. The report states that the proposed project would compete with the other shopping centers. However, it is not anticipated to create significant physical impacts to the other shopping centers (meaning, it would not result in a situation where tenant spaces become vacant, cannot be leased out to new tenants and would consequently create physical decay or blight within the shopping center), with the exception of Cochrane Plaza. There is concern that with the loss of Target, Cochrane Plaza may be impacted significantly. The EIR proposes mitigation measures to reduce some of the impacts, and the City will work with Target to backfill their space in Cochrane Plaza. However, even with these mitigation measures, the EIR states that the loss of Target in Cochrane Plaza would result in a significant and unavoidable impact.

What is the theory or understanding about how a new shopping development will do well? Trust me, I'm all for keeping MH dollars in MH rather than down in Gilroy but I think the idea with the Cochrane / 101 project (and hopefully so) is to create a "neighborhood" / "town" shopping experience only with an up to date look and feel. I don't know how it can give Gilroy a run for its money unless it is planned BIG. Which of course I don't think we all want to see happen to the extreme.

The Morgan Hill General Plan designates the project site as a 'Sub-Regional Commercial Site'. Therefore, this project is intended to have a sub-regional draw, meaning it is intended to attract customers from outside of Morgan Hill in addition to Morgan Hill residents. The design of the shopping center is intended to be pedestrian friendly and inviting, but still attract a larger customer base.

Comment Letter # 8 continued

... where are the new tenants customers expected to come from?

The developers have stated that they are working hard to attract businesses that will not duplicate those already in Gilroy. However, as you know, we do not know yet who the other tenants will be.

Is there a ratio understanding of population per square mile to square footage of grocery store space that may have been studied? Likewise with the other types of retail?

I am personally not aware of an exact ratio for either a grocery store or retail use. However, I can tell you that a few years back a study was completed that showed a need for an additional grocery store in Morgan Hill. There is also a General Plan policy that calls for a grocery store on the east side of the freeway along Cochrane Road. Therefore, if the project were approved with a grocery store, it would be consistent with the General Plan.

To be honest, if I may vent one unrelated but possibly relevant frustration. We are already dealing with speeding cars and SUV's containing people taking their test drive from Morgan Hill Ford Store, utilizing Cochrane Road and onto Peet Road directly behind our house. This is one example of how a neighborhood can be negatively impacted literally overnight.

According to the conditions of The Ford Store's approval, test driving is restricted to the freeway and Condit Road only. Therefore, if people are test-driving vehicles on Peet Road, The Ford Store would be in violation of their conditions of approval. If you'd like, you could file a code enforcement complaint, and the City's Code Enforcement Officer will look into the matter. Complaint forms can be found on the city's website.

Again, thank you for your comments Ashley.

Rebecca

>>> "Ashley Trewman" <Atrewman@legacytsi.com> 08/26/05 03:14PM >>>
Hello again Rebecca -

Thank you for your time and explanation. I realize it's still a bit nebulous in regard to tenant occupancy so I can appreciate how this may be speculative at this point. However, I am sure there is a science to planning something of this magnitude especially in this day and age so there has probably been a great deal of consideration on the Developers side as to who and what they can expect to lease to. Not just a "build it and they will come" mentality. I can certainly see a target (no pun intended) of up to two anchors as being a good goal.

Can you describe what you mean by "wholesale store" or can you give an example. I was wondering if this meant a grocery store of some kind. Personally our neighbors and I are hoping for a Whole Foods or Nob Hill and certainly a Trader Joes would be wonderful. But I'm sure this is the sentiment of allot of people including the Developer.

If I may play devils advocate for just a moment. I have a question that I'm curious what the City's view is on as I've only seen the question asked or alluded to but never answered. We are new residents to Morgan Hill having moved here just over 1 year ago now. I notice that some of the "plazas" if you will, don't seem to be doing so well on the whole. I certainly don't have numbers of study or anything so I could be very

Comment Letter # 8 continued

wrong but just based on my observation and things I read in the paper it seems there is some depression.

What is the theory or understanding about how a new shopping development will do well? Trust me, I'm all for keeping MH dollars in MH rather than down in Gilroy but I think the idea with the Cochrane / 101 project (and hopefully so) is to create a "neighborhood" / "town" shopping experience only with an up to date look and feel. I don't know how it can give Gilroy a run for its money unless it is planned BIG. Which of course I don't think we all want to see happen to the extreme.

Frankly with only a Target having come forward thus far - a store which already exists only a quarter of a mile away - I'm a bit worried this is all premature. Probably if the Developer is offering a "commit early" deal or discount to entice additional anchors then perhaps they will come more eagerly but where are the new tenants customers expected to come from?

I don't know that Morgan Hill is growing that quickly - actually I hope not. For example, already with 2 Safeway's an Albertsons and a Nob Hill, I think grocery stores may be covered I'm afraid. Is there a ratio understanding of population per square mile to square footage of grocery store space that may have been studied? Likewise with the other types of retail?

I realize Rome wasn't built in a day and I understand neither are they intending to do with this project. So fortunately there are probably inherent growth safety valves in place. Probably they can pull the "keep building" plug at various stages but I'm sure they hope not to have to.

As I mentioned, I'm for this plan (I hope...),,, and am looking forward to a more local coffee shop, I just hope we don't end up with a beached whale that they end up having to lease space to a strip of car dealers and fast food restaurants in order to make money. We as neighbors may have a small say or be entitled to our opinion regarding building design, parking lot lights, etc., but where we won't have any say I'm sure is on tenant occupancy and lease agreements once they get going. Or will we do you know?

To be honest, if I may vent one unrelated but possibly relevant frustration. We are already dealing with speeding cars and SUV's containing people taking their test drive from Morgan Hill Ford Store, utilizing Cochrane Road and onto Peet Road directly behind our house. This is one example of how a neighborhood can be negatively impacted literally overnight.

Thanks again Rebecca I do appreciate you giving your time to consider my comments as well as many others I'm sure.

Sincerely,
Ashley Trewman.

-----Original Message-----

Comment Letter # 8 continued

From: Rebecca Tolentino [<mailto:Rebecca.Tolentino@morganhill.ca.gov>]
Sent: Friday, August 26, 2005 1:43 PM
To: Ashley Trewman
Subject: Re: Comments on Draft EIR for proposed Development at CochraneRd and 101

Good Afternoon Ashley -

Thank you for your e-mail regarding the proposed shopping center. We always welcome comments from the public because it lets us know what concerns people have, so thank you for that.

With respect to the proposed tenants of the shopping center, it is my understanding that the only confirmed tenant is Target. All other uses are speculative at this time. To the best of my knowledge, Costco is not proposed to locate within the Cochrane Road PUD shopping center.

The project site plan identifies two large anchors within the shopping center, one of which will be Target. The user for the second large anchor is unknown at this time, but could be a home improvement store, department store, wholesale store, or other retail store. Based on the size of the second large anchor (140,000 square feet), it is not likely that a Costco would want to locate within that space. However, it would not preclude other wholesale stores from occupying the space.

I hope this answers your questions...If not, or if you have any additional questions, please feel free to e-mail me, or call me at (408) 779-7247.

Respectfully,
Rebecca Tolentino
Senior Planner

>>> "Ashley Trewman" <Atrewman@legacytsi.com> 08/26/05 12:37PM >>>
Dear Rebecca -

Thank you for receiving comments and concerns regarding the Cochrane and 101 development project. First I would like to mention that I am not against the plan. I believe it will enhance the area as well as bring an added benefit and appeal to Morgan Hill. Additionally I sincerely appreciate how the Developer has reached out not only to the community and the City but also to the local area residents for their input and questions prior to moving forward. I think this shows a tremendous sense of responsibility and "good neighbor" appeal and have been very impressed by this.

I do have one significant concern however and that is in regard to "big

Comment Letter # 8 continued

hoping this will remain the largest of stores in the plan. There are a host of concerns I believe a store such as Costco would lend to the immediate neighborhood so I won't outline them all.

Can you tell me if there has been any discussion on such a customer. My biggest concern is that geographically I can see how Costco may find that an ideal location for filling the gap between San Jose and Gilroy. Especially if the new Coyote (City?) becomes a reality. And after reading the article in the Pinnacle last week I'm afraid Morgan Hill might welcome just such a tax base entity.

In addition to the above specific concern I would like to point out that I am also concerned about issues such as environment, traffic, noise, visual, safety, lights, architectural, etc. but do hope and trust that the Developer is doing as much as possible to mitigate any negative impact in any of those specific areas.

Thank you and kind regards,

Ashley Trewman
Cell: 1-408-591-8796
www.legacytsi.com

2.0 RESPONSE TO COMMENTS

Response to Letter 8 – Ashley Trewman – August 26, 2005

Responses to comments provided in two emails on the proposed project were provided in the email correspondence by City staff.

Comment Letter # 9

From: "Jim Arthur" <jim.arthur@charter.net>
To: <rebecca.tolentino@morganhill.ca.gov>
Date: 8/27/05 9:19AM
Subject: Issues with EIR on proposed development at Cochrane/101

Rebecca-

Here is my list of concerns and comments regarding the proposed development at the SE corner of Cochrane and 101. Please add these to the list to be addressed with the EIR.

- 9-1 1) I have a concern about the amount of traffic that will be generated by this project coming into the surrounding neighborhood. The main assumption is that the bulk of the traffic will come off of 101 onto Cochrane and into the development. I fear that with the heavy traffic that will present, other traffic routes to the development will be used that are not designed to handle the increased traffic, namely, Mission View and Peet from the south. The idea of extending Condit from the south and connecting to DePaul Drive as a frontage approach to the development I feel is a sound one, and will direct increased traffic away from the Mission Ranch and Alcantre (sp?) neighborhoods.
- 9-2 2) Please fix, as part of the improvements of this project, the northbound ramp off of Cochrane onto 101. This ramp presently is coned and striped for non-stop traffic onto 1010, but since it does not have a light like on the other side south bound ramp it causes a great amount of confusion for commuters in the morning, with some people stopping and some not. This needs to be examined as it will be a major artery of not only commute traffic but also the development's customers.
- 9-3 3) I do not want to see a gas station in the complex. I think it is contradictory to the high end "theme" of the project, it will bring unwelcomed and unnecessary traffic into the development, and it opens the issue of ground water contamination to the wells that are very nearby and the service Morgan Hill.
- 9-4 4) My last concern is the increased noise from the project to the neighborhoods. I think this can be managed with strict store delivery schedules and design practices that the architect has acknowledged, but I want to make clear that items such as outdoor PA systems and speakers at restaurants and the theatre complex, etc. be severely curtailed or not allowed. The idea raised by the architect and developer that we will not notice any noise increase is not realistic.
- 9-5 5) Although I now agree that maybe the economical impact to the other Morgan Hill businesses may not be as severe as reported or in the EIR, I still believe there will be repercussions. I am concerned about Cochrane Plaza and its long term viability. I do not want to trade one shopping center for another and then have a dead eye sore on one side with a new center that could have been used for other productive purposes.
- 9-6 I do approve of the project's architectural design, and I feel very comfortable with the developer and principals. That said, I do wonder at the sheer size of the project. I would strongly like to see that no work be done on the phase 2 side of the project until the phase 1 part is fully or at most 90% done and occupied. I do not want to see buildings going in piecemeal (i.e. the theatres) and having vast parking lots and construction done and seating around. I'd rather see the vineyards and cows.

Thank you for your time and help on this project,

Jim Arthur

CC: <toyg@morgan-hill.ca.gov>

2.0 RESPONSE TO COMMENTS

Response to Letter 9 – Jim Arthur – August 27, 2005

Response to Comment 9-1

The commenter is concerned about traffic entering the project site from Mission View Drive and Peet Road from the south, which are unable to handle the additional traffic. The commenter prefers that the City direct traffic from the south and connect De Paul Drive as a frontage approach to the development in order to decrease the amount of traffic away from the surrounding neighborhoods. According to the project trip distribution analysis conducted by Fehr & Peers, Inc., approximately 25 trips during the AM peak hour; 119 trips during the PM peak hour; and 127 trips during the Saturday peak hour would travel south on Mission View Drive from Cochrane Road. As discussed in the traffic impact analysis under General Plan Buildout Conditions, the extension of De Paul Drive is assumed to the south linking De Paul Drive with Murphy Avenue. The De Paul Drive/Murphy Avenue extension is designated to be an arterial from Cochrane Road to East Middle Avenue.

Response to Comment 9-2

The traffic impact analysis evaluated the Cochrane Road/Northbound U.S. Highway 101 ramp. The level of service (LOS) for this intersection would operate at LOS B during the AM peak hour, LOS C during the PM peak hour, and LOS E during the Saturday peak hour. The impact at this intersection is therefore considered less than significant based as it would not decrease the LOS from an acceptable level of service (LOS E or better) to an unacceptable level (LOS F) at a freeway ramp intersection. A safety impact at this intersection was not noted by Fehr & Peers, Inc. and City staff.

Response to Comment 9-3

Comment noted. Comments regarding the type of land use do not raise an environmental issue and therefore no response is necessary. However, potential hazards associated with the planned fuel station are addressed in Section 3.7, Hazards and Hazardous Materials. As discussed on page 3.7-9, the operator of the gas station will be required to obtain a Hazardous Materials Storage Permit, which includes preparation of a Hazardous Materials Management Plan (HMMP), which is to include a Hazardous Materials Inventory Statement provisions for emergency response, double containment, monitoring and financial responsibility. The City of Morgan Hill will also require a separate permit for underground storage tank installation, and the County Fire Department will conduct a series of inspections at various stages of tank installation and construction to ensure compliance with all standards and requirements. Operation of a gas station will also require a conditional use permit from the City of Morgan Hill.

Response to Comment 9-4

The commenter is concerned about the increase in noise levels with implementation of the proposed project including outdoor public address systems associated with restaurants. Operational noise impacts are addressed in Section 3.10, Noise, starting on page 3.10-14. Public address systems would be typically associated with outdoor garden centers at the proposed large anchor stores and for restaurant uses noted by the commenter. The typical noise level of a restaurant public address system is similar to those used in outdoor garden centers, which is approximately 60 dBA at 50 feet due to the higher existing noise levels measured in the vicinity of the project site as part of the noise impact analysis. This noise level range would be similar to those used for outdoor public address systems.

As discussed in the noise impact analysis and in Section 3.10 of the Draft EIR, based on the layout of the proposed retail development, the relative distances from surrounding noise sensitive land-uses, and the use of line source (for truck passbys) and point source (for loading and unloading trucks, mechanical equipment, trash compactors, and parking lot noises) sound attenuation models, the noise levels generated by the operation of the proposed project would be at or below the existing average (L_{eq}) noise levels at the residential uses, including the operation of public address systems used at proposed restaurants, located north and east of the project site, and the residential uses located south and east of Cochrane Road.

Response to Comment 9-5

Cochrane Plaza may still result in a significant and unavoidable impact to urban decay due to secondary economic effects. These impacts are related to actual physical decay resulting from a decline in business, not a decline in business itself, which alone is not a potentially significant impact per the California Environmental Quality Act.

The City Council would be required to adopt a document called a 'statement of overriding consideration' for each significant and unavoidable impact identified in the Draft EIR, if they find that the benefits of the proposed project overcome the environmental burdens created by the significant environmental impacts. If the City can't make this finding, then the proposed project would not be approved.

Response to Comment 9-6

The commenter is providing comments regarding the project design and size. No specific environmental issue is raised and therefore no response is necessary.

Comment Letter # 10

August 28, 2005

Joseph Moran
1491 Santa Ines Way
Morgan Hill, CA 95037

Ms. Rebecca Tolentino
Associate Planner
City Of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

Dear Ms Tolentino,

Following are my comments on the draft Environmental Impact Report for the proposed shopping center at the corner of Cochrane Road and US highway 101. All comments are intended to address the adequacy of the DEIR rather than the merits of the proposed project. My concerns regarding the proposed project are as follows:

Concerns:

- 10-1 (1) The proposed project presents significant impacts to air quality in the immediate area, in particular the Mission Ranch residential area. Pollutant emissions, especially considering the close proximity to this residential area, present potential long-term health impacts including increased likelihood of developing leukemia and other forms of cancer, cardiopulmonary disease and asthma. Reduction in scope and an increase in the physical space (i.e. increase in the current buffer space planned by the applicant) between the proposed project and the current residential area would provide a direct reduction in these significant impacts to the community. The city should request that the applicant develop an alternate project plan, which is reduced in scope by at least 30%.
- 10-2 (2) The tremendous increase in traffic (estimated at 22,009 car trips) and sound levels (estimated to be almost a 4X increase) to the adjacent community of Mission Ranch will have a significant negative impact on the quality of life for this community. It is recommended that the proposed project in its current form be rejected. If the applicant wishes to continue pursuing development of a shopping center at the current site, a reduction in project scope should be requested or directed by the city as this is the best and most direct way of reducing significant traffic and noise impacts to the surrounding community.
- 10-3 (3) While the proposed project is perceived to increase the revenue for the city, there are a number of negative offsets that may significantly decrease or eliminate this perceived benefit, such as the impact to existing malls, increased need for police patrols, etc. This would also include any current negotiations between the city and the developer for offsets by the city, which the public is currently not privy too. A detailed economic analysis for the proposed project should be performed including a cost-benefit trade off for the proposed project and for a reduced project size as identified in the DEIR.

Comment Letter # 10 continued

Comments:

- 10-4 (1) Section 3 describes the use of the URBEMIS-2002 and Caline4 source dispersion model for predicting air quality. No information is given to substantiate the validity of the model and its application to the local geographical area being modeled. The bay area is noted for its various microclimates, where areas located within approximately 25 miles of each other may vary greatly in temperature, cloud/fog cover and humidity levels. Furthermore, no uncertainty values and confidence factors are given for each predicted pollutant level. For example while a predicted ozone level of 0.11 ppm may be below a required standard of 0.12ppm, a predicted value of $0.11 \text{ ppm} \pm 20\%$ with a 95% confidence would exceed the required standard. While any given pollutant level may be shown to be below a required threshold, without stating the accuracy or uncertainty of the prediction, it is difficult to assess the predicted levels as a whole. Without this information it is difficult for informed decision-making and public participation regarding the assessment of pollution related impacts for the proposed project. An explanation of why these specific models apply to the proposed project site should be given, an explanation as to how the models were validated for use in this region and predictions for pollutant levels should be revised to include the uncertainties associated with each estimated level.
- 10-5 (2) Section 3 incorrectly identifies the typical summer maximum temperature in the region as the mid 80's (deg F). The summer time maximum typically reaches the 90's at the proposed project site (which is the region of concern). If temperature was used as an input in modeling pollution content and dispersal at the proposed project site and adjacent areas, the resultant predictions may be in error and may possibly predict lower levels than will actually be experienced. The modeling performed in the EIR should be reviewed by a 2nd party to insure its accuracy, especially due to the significant air quality impacts identified.
- 10-6 (3) Impact 3.3-4 is described as a less than significant impact based on the rapid dispersal of CO emissions from the estimated 22,009 car trips each day. The analysis and the determination of its associated impact is believed to be flawed, as it does not take into account the collection and build-up of CO or other pollutant emissions or associated by-products within each residential or commercial dwelling adjacent to the proposed project from the estimated 22,009 car trips. The dispersion model used likely applies to an open area and does not take into account build-up of CO emissions within vehicles immersed in the CO hot spots or dwellings directly adjacent to the source(s). Road-side emissions are believed to be a contributor to some cases of childhood leukemia and cancer (reference: "Childhood Leukemia and Road-Traffic: A population-based Case-Control Study." Crosignani P.; Bianchi N; Tagliabue G; Fissi R; Rossitto F; Berrino F. International Journal of Cancer, 2004, V108, N4 (FEB 10), P 596-599 2004-02-10) and therefore would result in a significant impact. Without a thorough and valid analysis it is difficult for informed decision-making and public participation regarding the assessment of pollution related impacts. The analysis should be revised to take into account these effects.
- 10-7 (4) Mitigation measure 3.3-3 identifies a facilities trip reduction plan as the recommended approach to the mitigation of impact 3.3-3, described as a significant impact to long-term air quality. As described in appendix D, this mitigation impact may result in a decrease in emissions of only 6%. The EIR fails to recommend the mitigation measure that best reduces this particular impact – reduction in the proposed project scope, which would result in a direction reduction in the estimated 22,009 car trips. Furthermore,

Comment Letter # 10 continued

- 10-7 the EIR rejects this measure as a recommended mitigation measure for impact 3.3-3 as it claims it does not make the project economically feasible for the applicant, yet no substantiation has been given to this assertion. The mitigation measure for impact 3.3-3 should be correctly identified as a reduction in project scope/size. All statements regarding economic feasibility of the proposed project should be quantified. Without either a correction to the recommended mitigation measure or a substantiation of the assertion that a reduction in scope of the proposed project is not economically feasible for the applicant, it is difficult for informed decision-making and public participation in assessing this impact and its recommended mitigation measure.
- 10-8 (5) Section 6 of the EIR fails to include and assess the need for the addition of a cell tower in the area that may be required to increase channel capacity to accommodate the increased use of cell phones by a percentage of the 22,009 users per day (conservatively assumes 1 person per car per day and the EIR estimate of 22,009 trips per day) produced by the proposed project. Furthermore, a RF hazard analysis for the surrounding area should be performed given the potentially large number of RF radiating devices (cell phone transmissions) concentrated at the proposed site, and compared to federal, state and/or local laws, rules, regulations and/or standards. Without this assessment informed decision-making and public participation in assessing this impact cannot be made.
- 10-9 (6) The mitigation measure for impact 3.3-6 is incorrectly identified as "... no feasible mitigation measures available..." and is believed to result in a faulty analysis. A clear and direct mitigation measure is a reduction in the project scope, which would directly reduce the number of estimated car trips and consequently pollutant emissions. An alternative mitigation measure could be a re-location along with a reduction in the scope of the proposed project to areas along Monterey Highway near the railway system. Relocation closer to the railway system might allow workers and patrons an alternative method to travel to and from such a project. The mitigation measure for impact 3.3-6 should be revised as such.
- 10-10 (7) The resulting level of significance for impact 3.9-3b after implementation of mitigation measures 3.9-4, 3.9-5 and 3.9-6 may be incorrectly identified as "less than significant project impact" and may result in a faulty analysis. To determine the actual impact and resulting impact(s) after implementing the proposed mitigation measures, an economic analysis is required that conservatively estimates the generated revenue (for example sales tax) from the proposed project vs. the loss of revenue from the closure of major tenants in the Cochrane, Lawrence Oaks and Tennant Station shopping centers, the loss of revenue from lower tier businesses that would be indirectly impacted from the loss of these tenants and any expenditures the City may make to mitigate these impacts or offset the costs for implementation of the proposed project (for example road improvements). Without this analysis it is difficult for informed decision-making and public participation in assessing this impact and its recommended mitigation measures.
- 10-11 (8) The summary of mitigation measures to reduce the impact from noise (an almost 4x increase in the current noise levels in the surrounding area) from the proposed project (reference impact 3.10-2) may be incorrectly identified as "There are no feasible mitigation measures available.....". There is in fact a feasible method and that is to reduce the scope of the proposed project and increase the physical space (create a buffer) between the proposed project and the adjacent areas, in particular the existing residential areas. The EIR dismisses this option as it deemed not economically viable to the applicant.

Comment Letter # 10 continued

- 10-11** No quantitative substantiation or analysis is given to support this claim and/or conclusion. Without this information it is difficult for informed decision-making and public participation in assessing this impact and its recommended mitigation measures.
- 10-12** (9) The resulting level of significance from mitigation measure MM 3.11-1 identified for impact 3.11-1 is incorrectly identified as less than significant. The analysis fails to take into the account the need for increased police patrols and potential action in the surrounding areas as a result of potential spill over effects caused by the draw of 22,009 cars per day. Without including this within the analysis it is difficult for informed decision-making and public participation in assessing this impact and its recommended mitigation measures.
- 10-13** (10) In assessing transportation and circulation (impacts 3.12-1 and 3.12-2), the analysis fails to account for the potential need for the City of Morgan Hill to modify the corner of Condit and Half Roads. With potentially a large number of vehicles traveling along Mission View Road, the majority will be coming from or going to either Main or Dunne Avenues. Currently the corner of Condit and Half Roads presents a sharp 90-degree turn in either direction, with a utility pole at the corner of the turn. With the very large increase in traffic during both day and night times, the likelihood of head-on collisions would be expected to increase dramatically. As a matter of public safety, the City Of Morgan Hill would be compelled to modify that intersection. Without including this within the analysis and its associated impacts it is difficult for informed decision-making and public participation in assessing this impact and its recommended mitigation measures.
- 10-14** (11) In assessing transportation and circulation (impacts 3.12-1 and 3.12-2), the analysis fails to account for the potential need for the City of Morgan Hill to modify or require modifications to the intersection of Mission View Drive and Half Road. Currently that intersection has a large row of trees along the North-East corner which results in a visual blockage to drivers heading south on Mission View Drive and attempting to turn left or right onto Half Road. Possible mitigation measures include removal of all trees at the corner that block the drivers line of sight when stopped at the intersection and allowing them to clearly see southwest bound vehicles on Half Road or addition of a signal light at that intersection. Without including this within the analysis and its associated impacts it is difficult for informed decision-making and public participation in assessing this impact and its recommended mitigation measures.
- 10-15** (12) During winter and spring seasons, Mission View Drive, near Half Road floods. With the projected increase in traffic, this condition poses a significant safety hazard for the public as vehicles attempt to avoid the flooded area by driving in the opposing lane. This impact should be included within the analysis, including all proposed mitigation measures.

Thank you for your time and consideration.

Sincerely

Joseph Moran

2.0 RESPONSE TO COMMENTS

Response to Letter 10 – Joseph Moran – August 28, 2005

Response to Comment 10-1

Localized concentrations of Carbon Monoxide (CO) are the primary concern for sensitive receptors as noted on page 3.3-19 of the Draft EIR. Typically areas of high CO concentrations or “hot spots” are associated with signalized intersections operating at poor levels of service (LOS E or worse). Predicted 8-hour worst-case CO levels was measured at the intersections of Cochrane Road with U.S. Highway 101 and the impacts were found to be less than significant. The two intersections, Mission View Drive/Cochrane Road and the De Paul Drive/Cochrane Road intersections located in the vicinity of sensitive receptors (e.g. residential uses located east of the project site) would operate at acceptable levels of service with the installation of traffic signals at these two intersections. Therefore, no further analysis of localized CO emissions was conducted.

A reduced density site plan, which assumes a 40 percent reduction in the square footage of the proposed project, is discussed in Section 4.0, Alternatives to the Project. This alternative would essentially provide a buffer around the project site. A reduction in the square footage to 394,350 square feet would reduce the amount of emissions associated with the project, however as noted on page 4-15 of the Draft EIR, the reduced density alternative would also result in a significant and unavoidable air quality impact as the air quality emissions would exceed the thresholds established by the Bay Area Air Quality Management District (BAAQMD).

Response to Comment 10-2

As noted on page 3.10-13 of the Draft EIR, single family homes located at the southeast corner of the Cochrane Road/Mission View Drive intersection would experience a 1 dBA increase along the Cochrane Road frontage and a 4 dBA increase along Mission View Drive frontage with implementation of the proposed project. Illingworth and Rodkin, Inc. estimated that the current L_{dn} at the frontage of the homes along Cochrane Road and Mission View Drive southeast of the Cochrane Road/Mission View Drive intersection is 60 dBA. Considering these homes include a typical six-foot high noise attenuation barrier, the L_{dn} at the homes is estimated at 54 dBA.

Traffic generated by the proposed project would increase the L_{dn} at the homes along the Cochrane Road frontage to 55 dBA and to 58 dBA at the homes along Mission View Drive. According to the Noise Element in the *City of Morgan Hill General Plan*, exterior noise levels up to 60 dBA L_{dn} are considered ‘normally acceptable’ for single-family residential development. Therefore, increases in the noise levels due to the proposed project would be considered less than significant.

Response to Comment 10-3

An economic impact analysis was performed for the proposed project by Bay Area Economics and is included in Appendix I of the Draft EIR. Section 15131(a) of the California Environmental Quality Act states that "economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes." Secondary economic impacts that would cause a subsequent physical impact, or have the potential for urban decay were identified in Section 3.9, Land Use in the EIR.

The case can be made that a 'reduced density' alternative could have less of a potential to create urban decay depending on the uses to occupy the center. However, CEQA does not require alternatives to be examined in as great a detail as the project (e.g., an alternatives analysis is a means of avoiding or reducing the impacts associated with the project). Therefore, an economic impact analysis was not prepared for the reduced density alternative evaluated in Section 4.0, Alternatives to the Project in the Draft EIR.

Response to Comment 10-4

The URBEMIS-2002 model and the Caline4 source dispersion model are recommended by the California Air Resources Board and the Bay Area Air Quality Management District to model long-term operational and localized Carbon Monoxide (CO) air quality emissions associated with a development project. Appendix D of the Draft EIR includes the modeling results in the attachment, which explain the modifications to these models that were used to account for conditions in the vicinity of the project site and to determine the long-term operational air quality emissions and the localized CO emissions associated with the proposed project. The recommended inputs in the *Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines* were used in order to ensure adequacy of the results and reduce any uncertainties associated with each estimated pollutant level. Regardless, the long-term operational air quality emissions associated with the proposed project were found to be above the air quality thresholds established by the BAAQMD and not below the thresholds as noted by the commenter. Therefore, the proposed project would result in a significant and unavoidable air quality impact. As discussed in Response to Comment #12-5, the City Council would be required to adopt a document called a 'statement of overriding consideration' for each significant and unavoidable impact identified in the Draft EIR, if they find that the benefits of the proposed project overcome the environmental burdens created by the significant environmental impacts. If the City can't make this finding, then the proposed project would not be approved.

2.0 RESPONSE TO COMMENTS

Response to Comment 10-5

The commenter is concerned that the summer time temperature noted in the Draft EIR is incorrect. Although the temperature at the project site may reach the 90s, the "average" summer high temperature in the City of Morgan Hill is approximately 85 degrees. This temperature value was used in the air quality modeling to evaluate the long-term operational air quality emissions associated with the proposed project. The air quality modeling performed by Illingworth and Rodkin was a conservative analysis of predicated long-term operational air quality emissions and was prepared under contract to the City of Morgan Hill.

Response to Comment 10-6

See response to Comment #10-1.

Response to Comment 10-7

A reduced density site plan, which assumes a 40 percent reduction in the square footage of the proposed project, is discussed in Section 4.0, Alternatives to the Project. This alternative would essentially provide a reduction in the square footage of the proposed project to 394,350 square feet, which would subsequently reduce the amount of emissions associated with the proposed project. However as noted on page 4-15 of the Draft EIR the reduced density alternative would also result in a significant and unavoidable air quality impact as the air quality emissions would exceed the thresholds established by the Bay Area Air Quality Management District (BAAQMD), even with a 40 percent reduction in the density of the proposed project. Additional recommended measures, provided by the BAAQMD, have been added to Mitigation Measure 3.3-3 to reduce long-term operational emissions associated with the proposed project. Please see Response to Comment Letter #15.

Response to Comment 10-8

A cellular tower is not included in the project description and it would be speculative to assume that a cell tower would be considered necessary once the proposed project is constructed. Therefore, a radio frequency (RF) hazard analysis is not required. Any future cell tower would require a special permit from the City of Morgan Hill.

Response to Comment 10-9

Comment noted. Impact 3.3-6, Cumulative Air Quality Emissions evaluates emissions associated with the proposed project. Emissions associated with a 'reduced density' alternative are evaluated in Section 4, Alternatives to the Project as discussed in Response to Comment #10-1.

Response to Comment 10-10

This comment seems to be requesting a fiscal analysis as opposed to the economic impact analysis that was prepared for the Draft EIR. This analysis is not related to physical impacts and urban decay, and is therefore beyond the scope of the economic impact analysis in the Draft EIR. The California Environmental Quality Act requires that the Draft EIR evaluate the potential for urban decay due to secondary economic impacts. Based on the economic impact analysis prepared by Bay Area Economics, the proposed project would likely lead to a significant and unavoidable impact with respect to urban decay and physical deterioration at the Cochrane Plaza shopping center.

Response to Comment 10-11

The Draft EIR evaluated the potential impacts of the project as proposed. As discussed in Response to Comment #10-7, a reduced density site plan, which assumes a 40 percent reduction in the square footage of the proposed project, is discussed in Section 4.0, Alternatives to the Project. This alternative would essentially provide a reduction in the square footage of the proposed project to 394,350 square feet, which would subsequently decrease the amount of noise in comparison to the proposed project.

Response to Comment 10-12

Comment noted. The EIR does address the need for increased police patrols within implementation of the proposed project. As stated on page 3.11-6 of the Draft EIR, the proposed project would generate an additional eight to twelve additional calls per day (approximately ten percent above existing city-wide demand) and the possible need to hire an additional patrol officer or officers to the police force. However, the increase in service demand would not require the provision of new or physically altered government facilities as the newly constructed Police Station could accommodate the increased demand. The project applicant would be subject to development impact fees for public safety facilities, equipment, and training collected by the City of Morgan Hill (Section 3.56.030 of the City of Morgan Hill Municipal Code). Payment of standard development impact fees would provide funds for the maintenance of acquisition of equipment such as patrol cars. However, the use of specific security features, as required by Mitigation Measure 3.11-1, will be sufficient to augment existing police services and would reduce this impact to a less than significant level.

Response to Comment 10-13

The commenter is concerned about the safety impacts at the intersection of Condit Road and Half Road with an increase in traffic associated with the proposed project. The traffic impact analysis did not evaluate the intersection of Half Road and Condit Road based on the distribution of project traffic as shown in Figure 9A, Project Trip Assignment in the

2.0 RESPONSE TO COMMENTS

traffic impact analysis. A potential safety hazard at this intersection was not identified by City staff. The City of Morgan Hill will continue to monitor this intersection for potential traffic safety hazards.

Response to Comment 10-14

The commenter is concerned about the potential safety hazards at the intersection of Mission View Drive and Half Road. A potential safety hazard at this intersection was not identified by Fehr & Peers, Inc. and City staff. The City of Morgan Hill will continue to monitor this intersection for potential traffic safety hazards.

Response to Comment 10-15

Comment noted. The commenter states that there is an existing safety problem during the winter and spring seasons on Mission View Drive near Half Road due to flooding. The proposed project would not contribute to the flooding along Half Road and therefore is not responsible for finding a solution to the flooding issues along Half Road. According to the project trip distribution analysis conducted by Fehr & Peers, Inc., approximately 25 trips during the AM peak hour; 119 trips during the PM peak hour; and 127 trips during the Saturday peak hour would use Mission View Drive. A potential safety hazard at this intersection was not identified by Fehr & Peers, Inc. and City staff during preparation of the Draft EIR. The City of Morgan Hill will continue to monitor this intersection for potential traffic safety hazards.

Comment Letter # 11

From: Cherie Bourlard <cbourlard@yahoo.com>
To: <Rebecca.Tolentino@morganhill.ca.gov>
Date: 8/29/05 1:28PM
Subject: Development at Cochrane & 101 Comment

Hi

This comment concerns the proposed new commercial development at Cochrane and HWY 101 and the Environmental Impact it may have.

11-1 I have heard from the developer that Mission View Drive will be extended alongside the mall and serve as the east boundary. It is ONLY from this road, towards the northern edge of the mall, of which large, loud, smelly, (speeding?) delivery trucks will have access for their deliveries. I am concerned since this access road will be adjacent to other houses and small children in the area, as well as the County Park. It would be much better to design the mall so the delivery trucks can make access from a road adjacent to hwy 101, and be DENIED access on Mission View Drive.

Please pass this along to the Planning Committee.

Thank you.
Cherie Bourlard
cbourlard@yahoo.com

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2.0 RESPONSE TO COMMENTS

Response to Letter 11 – Cherie Bourlard – August 29, 2005

Response to Comment 11-1

Comment noted. The commenter is concerned about delivery trucks using Mission View Drive to deliver merchandise to the proposed commercial/retail center. Based on the current site plan, trucks would be allowed to enter the project site from both Cochrane Road and Mission View Drive. Placing a roadway with access to Cochrane Road adjacent to U.S. Highway 101 would be considered a traffic safety hazard based on the distance of a roadway at this location in proximity to the U.S. Highway 101 Northbound Ramp/Cochrane Road intersection.



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Sent Facsimile and U.S. Mail
August 29, 2005

Ms. Rebecca Tolentino
City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037-4128

**Re: Opposition to Draft Environmental Impact Report
Cochrane Road Planned Unit Development**

Dear Ms. Tolentino:

The following comments relate to the draft Environmental Impact Report ("EIR") for the Cochrane Road Planned Unit Development. These comments are prepared on behalf of the Morris Family, which owns all of Cochrane Plaza except Mervyns and Target, the existing shopping center which is most dramatically impacted by this development. The Morris Family is also responsible for managing the common areas in the Cochrane Plaza for Mervyns and Target.

I. INTRODUCTION

The Cochrane Road Planned Unit Development is proposed on a 66.49 acre site located at the northeast corner of Cochrane Road and U.S. Highway 101. The development would create approximately 657,250 square feet of new commercial retail space. The proposed uses for that space include two (2) large anchor stores, retail shops, fast food restaurants and a multiplex cinema ("Project"). The Project hopes to be a "lifestyle" center with a regional draw; however, as proposed, the Project is more like a conventional shopping center than a "lifestyle" center. As currently configured, the proposed Project includes uses atypical of a conventionally defined lifestyle center, and the site plan appears to be more conventional. (Appendix I, pg. 26) Given the current and proposed amount of retail space in the City of Morgan Hill ("City") and the population forecasts for the area, the Project is unnecessary and will result in detrimental impacts on existing retail centers which will have deep ramifications throughout the City.

The significant environmental and economic impacts of this Project should not be ignored merely to approve another shopping center in the City. The EIR fails to adequately address the environmental impacts caused by the Project and fails to produce evidence to support a finding of overriding consideration. Based on the deficiencies in the document, failure to comply with the requirements of the California Environmental Quality Act ("CEQA")

Comment Letter # 12 continued

Ms. Tolentino
Re: Opposition to Draft Environmental Impact Report
Cochrane Road Planned Unit Development
August 29, 2005
Page 2

and the potential for significant impacts on the environment caused by the Project, the EIR is legally inadequate and the Project should not be approved.

II. ADEQUACY OF THE EIR

A. An Inadequate Analysis Of All The Environmental Impacts Associated With The Urban Decay Caused By The Project Makes The EIR inadequate.

The EIR's discussion of a project should encompass "the whole of an action, which has potential for resulting in either direct physical change in the environment, or a reasonably foreseeable indirect physical change on the environment...." (California Code of Regulations section 15378) The EIR must consider the "direct physical changes caused by and immediately related to the project." (California Code of Regulations section 15604(d) This Project, as a whole, has a high likelihood of causing direct physical changes to existing shopping centers. As required by *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1195, the EIR, in the Retail Market Impact Analysis, found at Appendix I, undertook an analysis of whether the Project could trigger a series of events that would ultimately result in urban decay and deterioration.

Even with mitigation measures, the negative impact of this Project on existing shopping centers, especially Cochrane Plaza, is significant and unavoidable. The Retail Market Impact Analysis concludes that there is a high likelihood that the Cochrane Plaza will enter into a cycle leading to deterioration and urban decay. (Appendix I, pg. 47) This is especially true, since Cochrane Plaza will lose its anchor store, Target, which plans to move to the Project site¹. Other retail and dining establishments at Cochrane Plaza which compliment Target will likely be lost if this Project is approved. At least 52.8% of the tenants at Cochrane Plaza have lease provisions which allow them to cancel their leases and move out if Target or a comparable store is not located at Cochrane Plaza² and other conditions

12-1

¹Although Target has indicated that even in the absence of the Project, it is likely to leave Cochrane Plaza, there is no economic incentive for Target to work with the owners of Cochrane Plaza to find a mutually agreeable solution for staying in its current location if this Project is approved. Since the Project proposes more retail space than the market will bear now or in the future, it appears to be simply a vehicle for Target's expansion, and has significant and unavoidable impacts on the economic conditions in the City, the EIR should consider expanding the existing Target at its current location as a feasible and superior project alternative.

²Although the current Cochrane Plaza tenants may not be the "lifestyle" tenants sought after by Project developers, they are uses compatible with Target. Consequently,

Comment Letter # 12 continued

Ms. Tolentino
Re: Opposition to Draft Environmental Impact Report
Cochrane Road Planned Unit Development
August 29, 2005
Page 3

12-1
cont'd

are not met. Other tenants have expressed hesitancy to renew their leases. Still others are unwilling to begin leasing space without assurance that Target will remain on site. It is highly likely that if this Project is approved Cochrane Plaza will "go dark" or "enter[] a cycle leading to urban decay and physical deterioration resulting from long-term vacancies, secondary business closures, and the inability to retenant existing stores." (Appendix I, pg. vi) In addition, other retail centers in the City have experienced difficulties in leasing and renewing leases in the light of the Project. Specifically, the eight (8) acre parcel proposed for a neighborhood commercial center of 72,000 square feet on the corner of Cochrane Road and Madrone Parkway has experienced such problems. Due to difficulties in obtaining tenants and the uncertainty in the market caused by the Project, the center has yet to be constructed.

12-2

The likelihood of Cochrane Plaza going dark as predicted by the Retail Market Impact Analysis is all too real in the City. Several years ago, a similar situation occurred at Tennant Station when Safeway moved to another center. Safeway's relocation resulted in other tenants being forced out of the center because they could not survive without the anchor. Ultimately, the center went dark. To further exacerbate the problem, Safeway owned and controlled its own parcel, so it was unwilling to sell or lease to another supermarket for fear of competition. This is precisely what will happen to the Cochrane Plaza if Target is permitted to relocate on the other side of U.S. Highway 101.

12-3

Although the EIR studies the potential for urban decay, it does not purport to analyze the impact of the significant and unavoidable urban decay on other environmental concerns. The EIR does not take into consideration the impact that this unavoidable urban decay will have on aesthetics. The City has a policy to "enhance the visual integrity of the gateways to the City..." (Policy 14a, EIR, pg. 3.1-9) One of those gateways is Cochrane Road where both the Project and Cochrane Plaza are located. The EIR does not discuss the aesthetic impact of the deterioration of Cochrane Plaza caused by the Project.

The EIR also does not discuss the impact that urban decay on the number of police, fire and medical services needed at other shopping centers, like the Cochrane Plaza, which are negatively affected by the Project. (EIR, pg. 3.11-5) As the Planning Commissioners correctly pointed out, there is already an insufficient estimate of the increase in call volume for fire, police and emergency medical services in the EIR. This deficiency is only

if the Project is unable to lease its enormous proposed retail and restaurant space, Cochrane Plaza tenants may, desirous of being close to the Target, simply move to the Project leaving Cochrane Plaza vacant. This will result in no net benefit to the City. In fact, there will be a detrimental impact: significant and unavoidable urban decay. The EIR fails to adequately consider this likely result.

Comment Letter # 12 continued

Ms. Tolentino
Re: Opposition to Draft Environmental Impact Report
Cochrane Road Planned Unit Development
August 29, 2005
Page 4

exacerbated by the failure to consider whether the presence of urban decay will increase the need for fire, police and emergency services in the community.

12-3 The EIR does not account for the loss of jobs at existing centers in its determination that overall the Project will generate employment opportunities and attract residents to the City. (EIR, pg. 3.11-7) It does not examine the impact of the urban decay with respect to the City's policy to encourage retention and expansion of existing businesses. (EIR, pg. 3.9-5) Because the EIR fails to assess the impact of urban decay caused by the Project on other areas of environmental concern such as aesthetics, public services, and land use, the EIR is inadequate.

B. There Are Mitigation Measures Which Could Reduce The Impact Of The Project On Economics To A Less Than Significant Level.

12-4 Currently, the only retailer committed to the Project is Target. Rather than developing a large mass of retail space in an area where the projected population density does not support increased retail square footage, an alternative would be to expand Target at its current location. This will avoid drawing attention away from the downtown area that the City is currently attempting to revitalize. This will reduce the economic impacts on existing shopping centers. This will reduce the traffic, noise and air quality impacts that are sure to come with this large retail development and its large parking. Expanding Target in its existing location or by possibly adding a second story is an appropriate mitigation measure to be considered.

A second mitigation measure which should be considered would be changing the restriction on the Cochrane Plaza to allow a supermarket to fill the space left vacant by Target. Only the market for a supermarket is strong enough to add another competitor. (Appendix I, pg. IV) Although it is likely desired by the voters, the delay in getting such an item to the ballot may start the decent into urban decay before the Cochrane Plaza has an opportunity to retool and retenant in a way that is beneficial for the community, thereby avoiding the detrimental impact the Project will have on the community.

C. The City Cannot Make The Findings Of Overriding Consideration To Approve This Project In Light Of The Significant Impacts This Project Will Have On The Economic Vitality Of The City.

12-5 Pursuant to California Code of Regulations section 15042, the City should disapprove a project to avoid significant environmental impacts. If, despite the significant unavoidable environmental impacts, the City still wishes to approve the project, the City must make findings of overriding considerations. (California Public Resources Code section 21081) A

Comment Letter # 12 continued

Ms. Tolentino

Re: Opposition to Draft Environmental Impact Report

Cochrane Road Planned Unit Development

August 29, 2005

Page 5

statement of overriding considerations is intended to demonstrate the balance struck by the body in weighing the benefits of a proposed project against its unavoidable environmental risks. (California Code of Regulations section 15093) The statement must describe the economic, legal, social, technological or other benefits of the project and must be supported by substantial information in the record. (California Public Resources Code section 21081; California Code of Regulations section 15042; see also *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223)

As detailed in the EIR and the economic analysis, the Project will have a significant impact on existing retail in the City of Morgan Hill. In fact, the impact on the Cochrane Plaza is significant and unavoidable. Although the EIR attempts to mitigate the impacts of the Project by requiring the provision of redevelopment funds and small business loans to assist retail establishments in the City, these measures are inadequate to mitigate the devastating impact this project will have on retail centers in the City.

12-5

The benefits of the Project do not outweigh the devastating impacts the Project may have. As detailed in the retail analysis report, the Project is unnecessary. Currently, the status of retail in the City is good. "...the potential for additional dollars to be captured with an increase in retail is extremely limited." (Appendix, pg. iii) There is no urban decay or physical deterioration resulting from deferred maintenance or disinvestment. (Appendix I, pg. 43) The Project is proposing approximately 590,000 square feet of retail space when the market in Morgan Hill can only support 378,000. (Appendix, pg. 24) The Project proposes fast food restaurants when the City needs sit-down restaurants. (Appendix, pg. 23) The Project proposes a new movie theater when the theater in the City, which currently has eight (8) screens was recently approved for renovation and the addition of three (3) new screens which adequately meets the needs of the City. (Appendix, pg. v, 36) At this time and given the projections for population growth within the City, there is no reason to approve this Project which will lead the existing retail market in the City on a path to significant unavoidable urban decay. This Project is unnecessary. As such, the findings of overriding consideration cannot be made to ignore the detrimental economic impacts this Project will have on surrounding retail centers and ultimately the City.

D. EIR Inadequately Assess Economic Impacts On Downtown.

12-6

The City has a policy in place that seeks to "[e]nsure the viability of downtown...." (Policy 9a, EIR, pg. 3.9-4). The EIR dismisses any potential impact of the Project on the downtown area restaurants and retailers and by saying that downtown serves a "different market niche." The EIR does not define what market niche downtown serves. In *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411, the deficient EIR relied on undefined phrases such as "increased traffic" and "minor increase in air emissions" without defining or

Comment Letter # 12 continued

Ms. Tolentino

Re: Opposition to Draft Environmental Impact Report

Cochrane Road Planned Unit Development

August 29, 2005

Page 6

explaining the terms. Failing to define what "different market niche" the downtown serves makes the EIR inadequate.

E. A Potentially Unstable Project Description Makes The EIR Inadequate.

Courts recognize that "[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal...and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Berkeley Keeps Jets Over the Bay Committee v. Board of Power Com'rs* (2001) 111 Cal.Rptr.2d 589, 608)

The Project description is based on assumptions and conjecture which may not come to fruition. Specifically, the developers are proposing the Project as a "lifestyle" center. Based on that proposal, assumptions are made that this Project will result in additional tax revenue³ to the City because it will be a regional draw bringing in people from north and south of Morgan Hill. However, the Project, as proposed, is not a lifestyle center. It is proposing two (2) large anchors and other retail pads. With the exception of the movie theater, which is "speculative at this time", there are no lifestyle elements in the Project. (EIR, pg. 2-19)

12-7 The Project's only apparently committed tenant is Target which will occupy approximately 19% of the entire square footage proposed. The Project proposes to house a large home improvement retailer, but has no committed tenant. The Project has allotted 140,000 square feet of space for a home improvement store, but this enormous amount of space is more than double what the home improvement market will bear. (Appendix I, pg. 35) Consequently, the home improvement use also appears speculative at best and may need to be changed in response to market forces. In addition, it is difficult to attract other "lifestyle" national retailers to the City due to the current and projected population of the City.

In general, this Project provides more commercial retail square footage than can be supported by the current or projected population in the City. (Appendix I, pgs. 23-24) If the Project is approved, developed and then unable to interest the movie, home improvement, and other lifestyle tenants it hopes to have on site, the character and the corresponding environmental impacts of Project may vary significantly from those which are projected based on the current project description. Without more tenants committed to the Project, the project

³ The EIR fails to consider the loss of tax revenue that will result if other retail centers in the City go dark as predicted in Appendix I.

Comment Letter # 12 continued

Ms. Tolentino

Re: Opposition to Draft Environmental Impact Report

Cochrane Road Planned Unit Development

August 29, 2005

Page 7

description cannot be considered finite. The EIR fails to consider this potential for instability in any fashion. Consequently, the EIR is legally inadequate.

Interestingly, as an exclamation point to the potential for instability in this Project, there was a lot of discussion at the Planning Commission hearing on August 9, 2005, about "betting" on Coyote Valley being developed and its residents coming to this Project to shop. The EIR does not, but should, consider what impact the Project will have on the City if Coyote Valley is not developed or is developed in such a way that there is no need for its residents to come to the Project. The City's acceptance of the EIR would be an abuse of discretion if it remained based upon an uneducated and unstable "bet" as to the environmental outcome. It would not be in the best interest of the community for the Planning Commission to gamble with the City's future.

E. Air Quality Projections Not Based On Anticipated Conditions.

12-8

The air quality impacts are inadequately assessed as they fail to accurately reflect the situation which will exist when the Project is completed. The Calpine Power Plant has recently come online in the City of San Jose. This changed circumstance should be considered in the EIR. Also, there are other housing and development projects which were excluded from the EIR analysis that will increase vehicle emissions and lower air quality in the area. An analysis in the absence of an accurate understanding of the air quality existing at the time the Project is complete, minimizes the level of impact the Project will have and does not provide an accurate projection. It would be an abuse of discretion to certify an EIR in the absence of adequate air quality information.

F. The Findings For Overriding Considerations For The Conversion Of Prime Agricultural Land Cannot Be Made.

12-9

The Project will convert 66.49 acres of prime agricultural land which is considered a significant impact. Development of the Project removes the land from agricultural production and the land cannot be recreated or reproduced elsewhere. There are no feasible mitigation measures to reduce this impact. As such, the Project will result in a significant and unavoidable impact. (EIR, pg. 3.2-9) As outlined in detailed in Section II (B) above, the findings for overriding consideration cannot be made for this Project. As such, the Project should be denied.

⁴Coyote Valley is being designed as a self-contained community based on smart-growth principles. (Coyote Valley Specific Plan, Requests for Proposals, pg. 1)

Comment Letter # 12 continued

Ms. Tolentino

Re: Opposition to Draft Environmental Impact Report

Cochrane Road Planned Unit Development

August 29, 2005

Page 8

G. The Traffic Analysis is Flawed.

12-10

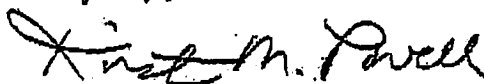
As proposed, the Project is expected to bring 22,009 new daily car trips to the Project area. However, this number was reduced by 25% to account for pass-by and diverted link trips during the peak hours. Pass-by trips are trips to the project site made by vehicles already traveling by the project site on the adjacent street. Diverted link trips are trips made by vehicles that make a detour to access the project site. Given the location of the Project site and the limited development on the east side of U.S. Highway 101, this reduction is severe and therefore, skews the traffic analysis.

The Project will result in a significant and unavoidable impact to traffic on U.S. Highway 101. (EIR, pg. 3.12-19) As outlined in detailed in Section II (B) above, the findings for overriding consideration cannot be made for this Project. As such, the Project should be denied.

III. CONCLUSION

The Project is proposing to develop almost 70% more retail space than the market can bear in Morgan Hill. This proposal will have detrimental impacts on the existing retail centers that will most likely result in urban decay which will have a ripple effect on the environment throughout the community. Any proposed benefits from the Project are greatly outweighed by the likelihood of urban decay in the City. In addition, the Project will result in significant and unavoidable impacts to traffic and agricultural land. As such, the Morris Family urges the Planning Commission not to certify the EIR or approve this Project.

Very truly yours,



Kirsten M. Powell

KMP:sw

cc: client

Response to Letter 12 – Kristen M. Powell, Logan and Powell LLP – August 29, 2005

Response to Comment 12-1

Comment noted. The economic impact report that was prepared by Bay Area Economics (BAE) predicted the secondary economic impacts that may result due to blight in the City as required by the California Environmental Quality Act. These secondary economic impacts are discussed in Section 3.9, Land Use in the Draft EIR. The Draft EIR acknowledges a significant and unavoidable impact on Cochrane Plaza even with implementation of mitigation measures incorporated within the EIR.

Expanding the existing Target store at Cochrane Plaza would be an alternative for the Target Corporation/, however the project site is zoned for 'Commercial' uses under the *City of Morgan Hill General Plan*, therefore whether or not the Target store relocated to the project site, this alternative would not meet the objective of the City of Morgan Hill of developing the project site for a commercial retail center in conformance with the *City of Morgan Hill General Plan*. In addition, the objective of the proposed project is to construct a new 123,800 square foot Target store and an additional 533,450 square feet of commercial space, including a mix of retail uses and restaurants.

Viable alternatives to the proposed project that were considered in the Draft EIR, were those alternatives that met the objectives of the proposed project, but reduced environmental impacts that were identified as significant environmental impacts. According to Section 15126.6, Consideration and Discussion of Alternatives to the Proposed Project, the range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. Alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that could feasibly attain most of the basic objectives of the project.

Response to Comment 12-2

Tennant Station is not currently dark. Therefore, secondary economics impacts on this center have not resulted in urban decay as noted by the commenter.

Response to Comment 12-3

Appendix G, in the California Environmental Quality Act requires that under 'aesthetics/visual resources' an EIR address whether or not a project will have a substantial adverse effect on scenic resources or a scenic vista, scenic resources within a State Scenic Highway or substantially degrade the visual character of the project site and its surroundings. Implementation of Mitigation Measure 3.9-1 and 3.9-2 would ensure that

2.0 RESPONSE TO COMMENTS

the Target Corporation make a written commitment to maintain their vacated store per the guidelines set out in the economic impact report, which will include but not be limited to prompt removal of trash and graffiti and upkeep of the vacant building to standards for a modern community shopping center and provide the City of Morgan Hill with a façade easement on the existing Target store. With implementation of these measures the secondary effects to aesthetics due to urban decay are anticipated to be less than significant.

See Response to Comment #1-14 regarding police and fire service impacts.

It is speculative to estimate the total net loss of jobs due to secondary impacts from urban decay associated with the proposed project. The focus of the analysis in the Draft EIR under the California Environmental Quality Act shall be on the physical changes to the environment, the physical effects of urban decay. The intermediate or social changes associated with a proposed project need not be analyzed in any detail greater than necessary to trace the chain of cause and effect.

Response to Comment 12-4

Section 4.0, Alternatives to the Project, evaluated alternatives to the proposed project. Alternatives evaluated included those that met the objectives of the proposed project, but reduced environmental impacts that were identified as significant environmental impacts. According to a letter provided by the Target Corporation, the existing Cochrane Plaza location does not meet Target's corporate lifestyle vision and therefore does not meet the objectives of the proposed project. In addition, the proposed project not only consists of the expansion of the Target store, but the construction of approximately 533,450 square feet of additional commercial space. Based on this information, expansion of the existing Target was not evaluated as a viable alternative in the Draft EIR that met the project objectives discussed on page 2-17 and 2-18 of the Draft EIR. In addition, construction of a supermarket at the existing Target location was not considered in the Draft EIR due to the significant hurdles, including voter approval and the large size of the existing Target store relative to what most supermarkets require.

Response to Comment 12-5

Comment noted. As discussed by the commenter, the City Council would be required to adopt a document called a 'statement of overriding consideration' if they find that the benefits of the proposed project overcome the environmental burdens created by the significant environmental impacts. If the City can't make this finding, then the proposed project would not be approved.

Response to Comment 12-6

As stated in the economic impact analysis, Appendix I of the Draft EIR, prepared by Bay Area Economics, the downtown represents a different market niche, with a focus on locally-owned small businesses rather than national chains, which are not likely candidates for location in downtown Morgan Hill regardless of whether the proposed project is approved and constructed. It offers a location with lower rents and start-up costs for local entrepreneurs. While some of the store types might be duplicative in a general way, downtown Morgan Hill will continue to offer smaller local merchants business locations that they could not afford at the shopping centers as well as offering a place to go for Morgan Hill residents who wish to shop at locally-owned businesses or for unique offerings of services or goods not found at chain stores. Also refer to Comment Letter #13.

Response to Comment 12-7

According to Section 15378 of the California Environmental Quality Act, a project means the whole of the action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The concept of a "lifestyle center" and/or a description of the specific tenants as mentioned by the commenter is not discussed in the project description of the Draft EIR and is not a required component of a project description under the California Environmental Quality Act. The Draft EIR analyzes a "worst-case" analysis under the California Environmental Quality Act with respect to the physical environmental changes associated with the proposed project.

The economic impact analysis conducted by Bay Area Economics discusses the concept of a lifestyle center; however, the economic impact analysis does not rely on the center being a lifestyle center, but rather assumes a more generic center. As noted in the BAE Executive Summary included in Appendix I, "this economic impact analysis assumes a more generic tenant mix" and thus the analysis is more conservative than if we had assumed a lifestyle center. Additionally, the economic impact analysis does not assume accelerated buildout of Coyote Valley and the proposed Coyote Valley plans do not include any regional-serving commercial.

Response to Comment 12-8

According to Section 15125(a) of the CEQA Guidelines, the description of the physical environmental conditions of the project site and its surroundings under existing conditions is "as it exists" when the notice of preparation (NOP) is published. The NOP for the proposed project was distributed on November 12, 2004. The environmental setting is therefore based on publication of this notice and a list of cumulative projects supplied by City staff at this time. Therefore, the analysis of the air quality is at the time the NOP was published. See Response to Comment #1-8 regarding the Calpine Power Plant.

2.0 RESPONSE TO COMMENTS

Response to Comment 12-9

See Response to Comment #1-2.

Response to Comment 12-10

Comment noted. The traffic impact analysis assumed a 25 percent reduction to account for pass-by and diverted link trips. The diverted link trips were those trips that would make a detour off U.S. Highway 101 to the project site and the pass-by trips were those trips that would be traveling in the vicinity of the project site (e.g. residential development located east of the project site) that make an interim stop between their primary origin and destination. The traffic impact analysis assumed that a greater number of trips would be diverted link trips than pass-by trips and to reflect the lower volume of traffic on roadways during the non-peak hours, a lower pass-by/diverted link reduction of 20 percent was applied to daily trips.

As discussed in Response to Comment #12-5, the City Council would be required to adopt a document called a 'statement of overriding consideration' for each significant and unavoidable impact identified in the Draft EIR, if they find that the benefits of the proposed project overcome the environmental burdens created by the significant environmental impacts. If the City can't make this finding, then the proposed project would not be approved.